

37 Am. Jur. 2d Fraud and Deceit § 80

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Fraud and Deceit

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IV. False Representations

B. Necessity that Representation Be of Fact; Opinions

4. Commendatory Trade Talk; Promotion and “Puffery”

§ 80. Rationale underlying rule

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West’s Key Number Digest

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The rule deeming trade talk not to be tantamount to representation is based on the universal practice of the seller to recommend the article or thing offered for sale and to employ more or less extravagant language in connection therewith.¹ Exaggerated statements as to value, quality, etc., do no more than express the opinion of the speaker,² and the law does not impose strict accountability for those vague commendations of a seller’s wares that are manifestly open to differences of opinion and that do not imply untrue assertions concerning matters of direct observation,³ being rather in the nature of exaggerations and meaningless superlatives, the truth or falsity of which cannot be precisely determined.⁴ The buyer cannot have relied on such commendations⁵ and has no right to do so.⁶

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Footnotes

¹ [Sorrells v. Clifford](#), 23 Ariz. 448, 204 P. 1013 (1922); [Castleman v. Stryker](#), 107 Or. 48, 213 P. 436 (1923); [Patterson v. Bushong](#), 196 S.W. 962 (Tex. Civ. App. Fort Worth 1917), writ refused, (June 5, 1918).
Sales talk or puffing is a universal and an expected practice and does not amount to actionable misrepresentation. [Republic Bank & Trust Co. v. Bear Stearns & Co., Inc.](#), 683 F.3d 239 (6th Cir. 2012) (applying Kentucky law).

² [Russell v. Wilson](#), 991 So. 2d 745 (Ala. Civ. App. 2008); [Home Depot U.S.A., Inc. v. Wabash Nat. Corp.](#), 314 Ga. App. 360, 724 S.E.2d 53 (2012); [Miller v. J and Q Automotive, Inc.](#), 2010 Mass. App. Div. 41, 2010 WL 1139244 (2010); [Harrison v. Avalon Properties, LLC](#), 246 S.W.3d 587 (Tenn. Ct. App. 2007).

³ [Hogan v. McCombs Bros.](#), 190 Iowa 650, 180 N.W. 770 (1921); [Castleman v. Stryker](#), 107 Or. 48, 213 P. 436 (1923); [Patterson v. Bushong](#), 196 S.W. 962 (Tex. Civ. App. Fort Worth 1917), writ refused, (June 5, 1918).

⁴ [Hanson-Suminski v. Rohrman Midwest Motors, Inc.](#), 386 Ill. App. 3d 585, 325 Ill. Dec. 461, 898 N.E.2d 194 (1st Dist.

2008).

⁵ [Speakers of Sport, Inc. v. ProServ, Inc.](#), 178 F.3d 862 (7th Cir. 1999); [Atlantic Nat. Bank of Boston v. Korrick](#), 29 Ariz. 468, 242 P. 1009, 43 A.L.R. 1184 (1926); [Morris v. Budd](#), 226 Ga. App. 455, 486 S.E.2d 682 (1997).

For negligent misrepresentation purposes, the term “puffery” is used to characterize those vague generalities that no reasonable person would rely on as assertions of particular facts. [Alpine Bank v. Hubbell](#), 555 F.3d 1097 (10th Cir. 2009) (applying Colorado law).

⁶ § 252.

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